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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement*/ submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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they do not obey their orders and do so. Police very rarely testify in court, and never stand trial accused of torturing or forcing confessions. That most criminal cases are based on confessions indicates that Cambodia is still employing a socialist evidentiary style. These violations breach article 7 of the ICCPR. The following cases illustrate:

a. On May 27, 1998, Ngan Kim Srun was charged drug usage, counterfeiting, murder, robbery and kidnapping of two children near the central market in Phnom Penh. The accused was one of ten persons charged in the kidnapping case, of which six persons are being prosecuted. The robbery and murder charges were dropped. Ngan Kum Srun was arrested by a soldier and blindfolded. According to his statement when brought to the police station he was beaten and forced to confess. However, witnesses did not identify him among the kidnappers, and the kidnapped children were not available to give testimony. The defence lawyer argued that the confessions were forced, but the investigating judge maintained that the accused had confessed to both the police and prosecutor, stating that there was no risk of being beaten by the prosecutor and therefore that confession could not be regarded as forced. The investigating judge decided to forward the case to court. The trial date is set for June 6, 2001 (Cambodia Defenders Project, Case No. 424 / 27-05-98).

b. On November 1, 1999, Kim Van Dy was one of three persons accused of robbery. The two other accused confessed and stated that Kim Van Dy also participated. When the case came before Phnom Penh Court, the two withdrew their statements and said that they had only confessed to Kim Van Dy being part of the crime because the police had beaten them and forced them to do so. The defence lawyer raised the question of forced confession, but the judge did not consider this argument and said that the police knew the three for their previous crimes, however he did not make any specific reference to a crime the accused had allegedly been involved in. No other witnesses were heard. The judge sentenced the accused to three years imprisonment. (Cambodia Defenders Project, Case No. 18/ 03-01-00).

6. Cambodian police also violate the right to liberty and security, including freedom from arbitrary arrest and detention, as dealt with by article 9 of the ICCPR. For example, in February 2000 a married couple travelling by motorbike in Siem Reap Province were arrested by a military lieutenant for no apparent reason. The husband was threatened with death if he resisted. Both suffered head inquiries from beatings. The wife was pregnant at the time of the incident, and the case went to court, as the couple wanted compensation for the wife having to spend all her time at the hospital till she gave birth. In November 2000, the judge issued an arrest warrant for the lieutenant, which was sent to the police commissary and headquarters of the provincial military police. By the beginning of December 2000, however, the perpetrator was still not arrested (LICADHO).

7. In Cambodia, illegal arrest and detention, torture and forced confessions in police custody are common. This situation may have been caused by many factors, such as the heritage of the communist era; the long term use of the Cambodian police as a tool for political power struggles; the militaristic role imposed on policing by past regimes; and the many police officers without training, if any education at all.

8. No doubt there is a major need for reform of policing in Cambodia. International organisations and donors must push the government to conduct reforms towards creation of a democratic civil police force committed to upholding the national constitution. However, reforms cannot be successful without the commitment and participation of all the key stakeholders, including the government and police organisations. Furthermore, police reform should be linked with reform of the judiciary and rule of law in Cambodian society.

9. In the short term, the Commission must urge the Government of Cambodia to make an effort to stop human rights violations committed by police and military authorities and to ensure that those violating constitutional provisions be bought to justice. The government should put high priority on creation of an independent organ with a mandate to handle complaints against the police, empowered to make inquiries into specific cases, as well as general areas of concern. It should have the capacity to obtain all documentation on cases that it is investigating and hold powers to subpoena and refer cases to the judiciary. An independent organ handling public complaints would facilitate reduction of the prevailing climate of impunity in Cambodia.